RECENT DECISIONS

BILLS AND NOTES—RENEWAL NOTE—FAILURE OF CONSIDERATION—ESTOPPEL.—The defendants executed to the plaintiff's intestate a series of promissory notes to cover a part of the contract price for the erection of cerain buildings that developed defects showing faulty workmanship and poor material. Afterwards, and with knowledge of these defects, the defendants executed a note to the plaintiff's intestate in renewal of one of the former series. When sued on this renewal note, the defendants attempted to set up the defense of failure of the consideration for the original note. *Held,* the plaintiffs can recover. *Stewart* v. *Simon, et al.* (Ark.), 163 S. W. 1135.

It was held in an early case that one who executes a renewal note with knowledge of a failure of consideration in the original, might set up the defense available for the original in an action on the renewal note. *Commonwealth Insurance Co. v. Whitney,* Metc. (Mass.) 21. But by the weight of modern authority, the execution of a renewal note with knowledge of a failure of consideration in the original will operate as a waiver or estoppel to the setting up that defense in an action on the renewal note. *Keyes* v. *Mann,* 63 Iowa 560, 19 N. W. 666; *Keckley* v. *Union Bank,* 79 Va. 458; *Montfort* v. *Americus Guano Co.,* 108 Ga. 12, 33 S. E. 636. *Contra, Wheelock* v. *Berkley,* 138 Ill. 153, 27 N. E. 942. The holding of the principal case would therefore seem correct. But where the renewal, although made with knowledge of the failure of consideration for the original note, was made on the faith of plaintiff's promise to remedy such failure of consideration, the defendant maker is not estopped from setting up the defense of failure of the consideration for the original in an action on the renewal note. *McDaniel* v. *Mallary Bros.*, 6 Ga. App. 848, 66 S. E. 146.

CONTRACTS—RESTRAINT OF TRADE—PARTNERSHIP—BREACH BY ONE PARTNER.—A partnership, in selling its business, contracted that it would not engage directly or indirectly in a competitive business. One member of the firm opened a competing business. *Held,* there is no breach of the contract. *Rapalee* v. *John Malmquist & Son* (Iowa), 145 N. W. 279.

By the weight of authority, a partnership covenant not to engage in a business competitive to the one sold the buyer, is broken by an act of a partner in engaging in such business. *Love* v. *Stidham,* 18 App. D. C. 306, 53 L. R. A. 379; *Boutelle* v. *Smith,* 116 Mass. 111; *Raymond* v. *Yarrington,* 96 Tex. 443, 73 S. W. 800, 62 L. R. A. 962. But it has been held that only an act of the partnership in so doing, can amount to a breach of the covenant. *Steichen* v. *Fehleisen,* 112 Iowa 612, 84 N. W. 715, 51 L. R. A. 412. This view is accepted by the principal case. Such a technical construction would deprive the promisee of any substantial protection, since the partnership ceased to exist on the sale of the business. *Love* v. *Stidham, supra.* The rule that contracts in restraint of

trade should be strictly construed should not override a reasonable construction of the intention of the parties.

CONSTITUTIONAL LAW—DELEGATION OF POWERS—REFERENDUM.—A statute concerning juries was passed by the legislature and was to become effective only after receiving a majority vote at a general referendum to the people of the state. *Held,* statute valid and not unconstitutional as a delegation of legislative powers. *Hudspeth* v. *Swayze* (N. J.), 89 Atl. 780. See NOTES, p. 632.

CORPORATIONS—CHARITABLE CORPORATIONS—LIABILITY FOR TORTS.—Where the plaintiff, a stranger, had accompanied a sick friend to a hospital, a charitable institution, and was injured by falling into an elevator shaft negligently left unprotected by the defendant, it was *held,* she can recover. *Hospital of St. Vincent* v. *Thompson* (Va.), 18 S. E. 13. See NOTES, p. 636.

CORPORATIONS—MANUFACTURING CORPORATIONS.—By a constitutional provision stockholders of manufacturing corporations were exempted from the liability there imposed on corporations generally. *Held,* a corporation for the generation of electricity for distribution to the public is a manufacturing corporation within the meaning of the provision. *Vencedor Inv. Co.* v. *Highland Canal & Power Co.* (Minn.), 145 N. W. 611.

The question whether a corporation for the generation of electricity is a manufacturing corporation under the various statutes and constitutional provisions is one on which the authorities are not in accord. Most of the older authorities and a number of the more recent cases hold that such a corporation is not a manufacturing corporation. *Frederick, Electric Light, etc., Co.* v. *Frederick,* 84 Md. 599, 36 Atl. 362; *Williams* v. *Park,* 72 N. H. 305, 56 Atl. 463.

In these cases the courts adhere to the earlier and more restricted definition of the word "manufacturer," holding, that to be a manufacturer one must produce a fabric or structure made from materials of some kind. In an early case it was said that on reason and principle a corporation for generating electricity should be held a manufacturing corporation but as the statute was meant to apply to those corporations which had, in the past, been considered as manufacturing corporations, the court held that the electric light company could not take advantage of the exemption allowed to manufacturing corporations. *Commonwealth* v. *Northern Electric Light Co.,* 145 Pa. St. 105, 22 Atl. 839. But recently in the same state it has been settled that corporations for generating electricity are manufacturing corporations within the terms of such statutes. *Commonwealth* v. *Keystone Electric, etc., Co.,* 193 Pa. St. 245, 44 Atl. 326. Modern authority favors such a construction of the laws regulating manufacturing corporations as to include within their terms, corporations for the production of electric currents. *People* v. *Wemple,* 129 N. Y. 543, 29 N. E. 808; *Beggs* v. *Edison Electric Co.,* 96 Ala. 295, 11 So. 381.